No. 277

IN THE

Supreme Court of the United States

October Term, 1948

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and
SWITCHMEN'S UNION OF NORTH AMERICA,

Petitioners,

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

CARL MCFARLAND
ASHLEY SELLERS
KENNETH L. KIMBLE

Counsel for Petitioners.

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CITATIONS

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Your petitioners, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, and Switchmen's Union of North America, respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia to review, before judgment in that court, the final judgment granting a permanent injunction against petitioners entered herein

by the District Court of the United States for the District of Columbia on July 2, 1948.[1]

OPINIONS BELOW

No opinion has been rendered by the Court of Appeals. The district court's oral opinion delivered at the close of the case stating its reasons for granting the permanent injunction appears at R. 216-220.

JURISDICTION

The final judgment of the District Court granting a permanent injunction was entered on July 2, 1948 (R. 236-237). On July 6, 1948, petitioners filed their notice of appeal to the Court of Appeals (R. 237) and on July 9, 1948, the record was filed and the appeal docketed in that court. No judgment has been entered by the Court of Appeals, and the case has not been briefed or argued in that court. The jurisdiction of this Court is invoked under Title 28, United States Code, section 1254(1).

QUESTIONS PRESENTED

1. Whether the Norris-LaGuardia Act (29 U. S. C. 101 et seq.) deprives a district court of jurisdiction to grant

[1] The district court also granted a preliminary injunction in this case (R. 86-87), from which petitioners appealed (R. 89) to the Court of Appeals (No. 9892 in that court). Before the Court of Appeals took any action on that appeal, the district court entered its final judgment (R. 236-237) and petitioners appealed (R. 237) from that judgment (No. 9924 in the Court of Appeals). Petitioners seek review here of only the final judgment. See *Shaffer* v. *Carter*, 252 U. S. 37, 44; *Smith* v. *Illinois Bell Tel. Co.*, 270 U. S. 587, 588; *Pacific Tel. Co.* v. *Kuykendall*, 265 U. S. 196, 205, 206; *Sterling* v. *Constantin*, 287 U. S. 378. The record (Joint Appendix) was printed in the Court of Appeals under both No. 9892 and No. 9924; all of the proceedings and evidence therein, however, are also properly a part of the record in No. 9924 alone (see R. 238).

an injunction against a peaceful railway strike arising out of a labor dispute between the private carriers and their employees.

2. Whether there is any basis for equitable relief to enjoin a non-violent railway strike, in view of the provisions of the Railway Labor Act (45 U. S. C. 151 et seq.) and the Labor Management Relations Act, 1947 (29 U. S. C. 141 et seq. (Supp.)), which demonstrate a congressional policy against the exercise of injunctive power in such a case.

3. Whether Section 301(c) of the Labor Management Relations Act, 1947, which the district court relied on to sustain venue, applies to this action, in view of the provisions of Sections 501(3) and 101 of the Act which exclude from its operation employers, employees and labor organizations subject to the provisions of the Railway Labor Act.

4. Whether the permanent injunction granted by the district court is broader than justified by the conduct found unlawful.

STATUTES AND EXECUTIVE ORDER INVOLVED

The pertinent provisions of the various statutes involved in this case are set out in the Appendix. Executive Order No. 9957, which effected the seizure of the railways herein, is set out in full at R. 266-269.

STATEMENT

History of the Proceedings. On May 10, 1948, respondent filed its complaint in the district court seeking to enjoin a strike called by petitioners (R. 2-7). On the same day, the district court issued an ex parte temporary restraining order (R. 21-23), which was later twice extended to continue in effect until June 11, 1948 (R. 28-29, 46-47). On

that date the district court, after oral argument, denied petitioners' motions to dismiss and granted respondent's motion for a preliminary injunction (R. 86-88). On July 2, 1948, after trial, the District Court entered its final judgment granting a permanent injunction against a strike (R. 236-237).

The Facts. Petitioners are three unincorporated labor organizations representing employees in the railway industry (Fdgs. 16, 17, 18, R. 231-233). On June 20, 1947, petitioners served on the private carriers which employ their members notices for requested changes in working rules, and on the same date the carriers served similar notices on petitioners (R. 242, 275, 319-320), all in accordance with Section 6 of the Railway Labor Act. On September 30, 1947, petitioners also served on the carriers notices requesting increases in wage rates (R. 242, 275, 320). Negotiations between the parties failed, and petitioners called a strike for 6:00 a.m. on February 1, 1948 (Fdg. 1, R. 225).

Pursuant to advice of the National Mediation Board, the President of the United States on January 27, 1948, acting under Section 10 of the Railway Labor Act, issued Executive Order No. 9929 creating an Emergency Board to investigate and report on the dispute in thirty days (Fdgs. 2, 3, R. 225). On March 27, 1948, the Emergency Board transmitted its report and recommendations to the President (Fdg. 4, R. 225). On April 6, 1948, petitioners advised the carriers that they declined to accept the recommendations of the Emergency Board, but requested a conference to discuss the matters considered in the Board's report (Fdg. 6, R. 226). Conferences between petitioners and the carriers were held from April 14 to April 27, 1948, but no agreement was reached (Fdg. 7, R. 226).

In accordance with Section 10 of the Railway Labor Act, which provides that for thirty days after the Emergency

Board's report to the President no change in the conditions out of which the dispute arose shall be made by the parties except by agreement, the so-called cooling-off period expired on April 27, 1948 (Fdg. 8, R. 226). On April 28, 1948, the National Mediation Board, acting pursuant to Section 5 of the Railway Labor Act, advised the parties that it desired further discussions (Fdg. 8, R. 226). Accordingly, further Mediation Board proceedings were held in Chicago from April 29 to May 4, 1948, but no agreement was reached (Fdg. 9, R. 226). On April 30, 1948, several days after the expiration of the cooling-off period required by the Railway Labor Act, petitioners notified the private carriers that all employees represented by them would withdraw from service at 6:00 a.m. on May 11, 1948, unless the issues were settled before that time (Fdg. 9, R. 226).

On May 10, 1948, the President of the United States, purporting to act under the Act of August 29, 1916 (10 U. S. C. 1361), issued Executive Order No. 9957. By its terms, the United States took possession and control as of noon of that date, through the Secretary of the Army, of the carriers involved in the dispute. (Fdg. 10, R. 226-227.) A few hours later on the same day, the Secretary of the Army conferred with petitioners' chief executives and requested them to continue to perform labor on the railroads and to call off the strike; but, on learning that the Secretary did not intend to negotiate with them concerning working rules and wage rates (R. 38, 176, 183, 200-201, 213), the executives declined (Fdg. 11, R. 227). On the evening of the same day, May 10, respondent filed its complaint herein and the district court granted an ex parte temporary restraining order enjoining a strike (Fdgs. 19, 20, R. 233).

At no time after the seizure did respondent enter into, or offer to enter into, negotiations with petitioners concerning wages, working rules, or other terms and conditions of employment (R. 39, 186, 205-206). Pursuant to the

seizure and the injunction of the district court, petitioners' members continued to perform services on the railroads under the terms and conditions in effect prior to the seizure (R. 39, 177-178, 202). After the May 10 seizure, petitioners and the private carriers continued their negotiations in the dispute between them over wages and working rules, respondent at no time participating in those negotiations as a party to the dispute (Fdg. 12(d), R. 228, 38-39, 106-107, 183, 186, 203-205). Throughout the dispute, respondent persisted in the position that it was not its function to enter into negotiations with either side over the terms and conditions of employment (R. 312-313, 98, 103, 176, 179-180, 201. The Secretary of the Army encouraged the continued negotiations between the private parties, respondent's purpose being to hold the railways only so long as necessary to permit the parties to settle their private dispute and to return the railways as soon as that dispute was terminated (Fdg. 12(d), R. 228-229, 38, 54-55, 103).

In their motions to dismiss (R. 29), and later in their answer (R. 222-223), petitioners contended that: (1) The district court lacked jurisdiction because of the provisions of the Norris-LaGuardia Act depriving the federal courts of jurisdiction to issue injunctions in any case involving or growing out of a private labor dispute. (2) There was no basis for equitable relief to enjoin a peaceful strike, particularly in view of the provisions of the Railway Labor Act which preclude the issuance of an injunction under the circumstances of this case. (3) And suit was brought in the wrong district because petitioners are not inhabitants of the District of Columbia, each having its principal place of business outside that district.

The district court rejected all of these contentions. It found that the threatened strike would result in a work stoppage in virtually the entire railway system (Fdg. 15(a), R. 230). It concluded that such a strike would deprive the country of essential transportation service, ob-

struct the flow of interstate commerce and transmission of the mails, interfere with the discharge of necessary governmental functions, and imperil the national health and safety (Fdgs. 15(b)-15(g), R. 230-231).

The permanent injunction entered by the district court on July 2, 1948, provides that (R. 237):

> the defendants, and each of them, and their officers, agents, servants and employees, and all persons in active concert or participation with them, be and they are hereby enjoined from in any manner encouraging, ordering, engaging in, or taking any part in a strike in the transportation by railroad system of the United States, or from in any manner interfering with or affecting the orderly continuance of work in the said railway system, and from taking any action which would interfere with this Court's jurisdiction in the premises.

This injunction remains in effect.[2]

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

(1) In holding that the Norris-LaGuardia Act does not deprive it of jurisdiction to issue an injunction in this case.[3]

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[2] After the permanent injunction was issued and an appeal taken to the Court of Appeals, petitioners and the private carriers continued their negotiations and entered into certain agreements, as a result of which the United States returned the railroads to the private owners. Thereupon, respondent moved in the district court for a discharge of the injunction. The district court denied the motion on the ground "that the cause is not moot". Subsequently, respondent filed in the Court of Appeals a similar motion to discharge the injunction, and later a motion to dispose of the cause on grounds of mootness. The Court of Appeals has taken no action on those motions. Petitioners moved the Court of Appeals to suspend all further proceedings in the cause pending consideration by this Court of this petition for writ of certiorari.

[3] The District Court made a finding of fact (Fdg. 10, R. 226-227) that immediately upon seizure the government became the employer of all employees performing services on the seized carriers. We intend the specification of error above to include this conclusory finding of fact.

(2) In holding that there was any basis for equitable relief against the peaceful non-violent strike involved in this case, and that the Railway Labor Act and the Labor Management Relations Act, 1947, do not preclude the issuance of an injunction against this strike.

(3) In holding that the suit was properly brought in the District Court for the District of Columbia.[4]

(4) In granting an injunction broader than justified by the conduct found unlawful by the district court.

REASONS FOR GRANTING THE WRIT

1. In holding the Norris-LaGuardia Act inapplicable, the district court both failed to give proper effect to an applicable decision of this Court and decided a question of substance relating to the construction of a federal statute which has not been but should be decided by this Court.

The district court held that the Norris-LaGuardia Act does not apply to this case for two reasons: (1) It held that, even if there had been no government seizure of the railways, the Norris-LaGuardia Act does not apply to "a situation where the entire transportation system of the country would be stopped". (2) It further held that, immediately upon government seizure, the workers became government employees and that therefore the case is controlled by *United States* v. *Mine Workers,* 330 U. S. 258. (R. 217-220.)

The first of these two reasons is squarely inconsistent with the decision of this Court in the *Mine Workers* case. There the majority of the Court said (p. 278): "We

[4] The district court made findings of fact (Fdgs. 16, 17, 18, R. 231-233) that each petitioner had duly authorized agents engaged in representing and acting for its employee members in the District of Columbia. Petitioners intend the specification of error above to include these conclusory findings.

agree . . . that Congress, in passing the Act, did not intend to permit the United States to continue to intervene by injunction in purely private labor disputes." But the ruling of the trial court in this case is to the effect that, even in purely private labor disputes, the government can secure an injunction in any case where, in the opinion of the court, the effect upon the nation is sufficiently serious. Consequently it is clear that in this ruling the District Court has not given proper effect to an applicable decision of this Court.

Nor is the trial court's second reason sound. In the *Mine Workers* case the government had entered into an entirely new contract with the employees eight days after seizure of the mines. The contract contained many basic departures from the prior agreement between the mine workers and the private operators, and had remained in effect for approximately six months. A dispute arose between the government and the workers over the terms of that contract, and the workers threatened a unilateral breach and strike. The injunction action was instituted by the government to vindicate its rights under its own contract with the workers.[8] The majority of the Court placed explicit reliance on those facts and because of them concluded that the Norris-LaGuardia Act did not apply for the reason that it was not a case growing out of a private labor dispute but was instead one involving "the Government's right to injunctive relief in a dispute with its own employees" (p. 278).

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[8] The War Labor Disputes Act (50 U. S. C. 1501-1511), under which the seizure in the *Mine Workers* case was made, was designed to prevent interruptions of the war effort as a result of strikes and provided that the National War Labor Board, upon application of the employees or the government agency operating the facilities, might order changes in wages or other terms and conditions of employment. The Executive Order effecting seizure of the mines authorized the Secretary of the Interior to negotiate with representatives of the miners and to apply to the National Wage Stabilization Board for changes in terms and conditions of employment for the period of government operation.

In the case at bar, the Executive Order not only contains no express provisions for negotiations between the government and the railway employees, but on the contrary provides that government operation is not to prejudice "the effectiveness of such retroactive provisions as may be included in the final settlement of the disputes between the carriers and the workers".[6] It further provides that the workers are to have the right to continue "to bargain collectively through representatives of their own choosing with the representatives of the owners of the carriers, subject to the provisions of applicable law, as to disputes between the carriers and the workers" (R. 268).[7]

At no time during the period of government possession and control did respondent enter into, or offer to enter into, negotiations or a contract covering terms and conditions of employment (R. 39, 186, 205-206). At the request of government officials, the private parties continued after government seizure to hold conferences for the purpose of negotiating for a settlement of their private dispute (Fdg. 12(d), R. 228, 38-39, 106-107, 183, 186, 203-205). The sole aim of the government was to encourage the private parties "to meet in an effort to reach an agreement under which the Government can turn the railroads back to private management" (R. 54, 103). As the district court found (Fdg. 12(d), R. 228-229):

> "The Secretary of the Army has permitted and encouraged the continuation of such negotiations in

[6] The statute under which the seizure was made (Act of August 29, 1916), says nothing about the government's negotiating for changes in terms and conditions of employment; it was not designed to eliminate labor disputes but solely to permit the government to utilize railways for war needs in preference to civilian purposes.

[7] Here the private owners and the carriers had been negotiating for many months over wages and working rules. A strike was called once, postponed pending procedures and the cooling-off period under the Railway Labor Act, and then reset for 6:00 a.m. on May 11 (Fdgs. 1-9, R. 225-226). Only eighteen hours before that time, the government took possession of the railways, and less than eight hours after seizure the complaint was filed and the ex parte temporary restraining order issued (Fdgs. 10, 20, R. 226-227, 233).

> the belief that, if the former management and defendant Unions reach an agreement concerning wages, hours, terms and conditions of employment, the United States of America will be enabled to return the seized transportation systems to former management with the assurance that there will be no interruption in the transportation service necessary to the national health, safety and welfare."

This finding demonstrates the whole theory of respondent—that seizure and injunction may be utilized and limited to forcing the settlement of a purely private labor dispute.

We think it clear that the railway workers did not become employees of the government, that there was no labor dispute between the government and the employees, that this case involves and grows out of a private labor dispute between the carriers and the workers, and that therefore the bar of the Norris-LaGuardia Act against injunction is fully operative. The workers did not become public employees merely upon the assumption of possession and control of the railway systems by respondent. The Act of August 29, 1916, authorized seizure of property, not of employees. It is not a compulsory draft law. And mere seizure of property does not establish the personal relation of employer and employee. See *J. I. Case Co.* v. *Labor Board,* 321 U. S. 332, 335-337; *The Standard Oil Co.* v. *Anderson,* 212 U. S. 215, 220; *National Labor Relations Board* v. *Knoxville Pub. Co.,* 124 F. 2d 875 (C. C. A. 6). This case did not cease to be one involving and growing out of a private labor dispute within the terms of the Norris-LaGuardia Act simply because of, and immediately upon, seizure of the railways by respondent.

The question here is whether the government, which under the Norris-LaGuardia Act is not entitled to an injunction in a purely private dispute, can circumvent that congressional inhibition simply by seizing property and nothing more. We think that under the reasoning of this

Court in the *Mine Workers* case respondent is not entitled to an injunction here. In any event, the case presents a question of substance relating to the construction of a federal statute which has not been but should be decided by this Court.

2. In holding that there was an equitable cause of action, the district court both failed to give proper effect to applicable decisions of this Court and decided a question of substance relating to the construction of a federal statute which has not been but should be decided by this Court.

The district court concluded that there was a cause of action in equity because the threatened strike would imperil interstate commerce, the mails, and national health and safety (Concl. of Law 8(b)-8(f), R. 235-236). It further held that the Railway Labor Act and the Labor Management Relations Act, 1947, did not preclude issuance of an injunction (Concl. of Law 6, R. 235). We believe that no equitable cause of action was shown here for the reason that petitioners' attempt to call a peaceful and nonviolent strike involves no wrongdoing. Moreover, in the two named statutes, Congress has plainly withheld authority for the exercise of injunctive process in such cases as this.

To establish a basis for equitable relief, there must of course be some wrongful act. In an effort to satisfy that requirement, respondent relied below on *In re Debs,* 158 U. S. 564, and the trial court adopted that basis for its decision (R. 220). But there the pleading alleged violence (pp. 568-569, 570-571), and the right to injunctive relief was sustained solely on the basis of evidence of "forcible obstruction" and violence (pp. 577, 582, 586-592, 598-599). Thus this Court there said (p. 598):

> The right of any laborer, or any number of laborers, to quit work was not challenged. The scope and pur-

> pose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried. And the facts set forth at length are only those facts which tended to show that the defendants were engaged in such obstructions.

That such was the sole basis of the decision is also illustrated in the related case of *Clune* v. *United States,* 159 U. S. 590, 592. This Court, speaking through Chief Justice Taft, has since held in *American Foundries* v. *Tri-City Council,* 257 U. S. 184, that a non-violent strike is lawful, saying (p. 209):

> The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital.

Nothing more is involved in this case. On the basis of these authorities therefore there is no right to equitable relief here.

Further conclusive support for this view is provided by the Railway Labor Act and the Labor Management Relations Act, 1947, which together demonstrate a congressional policy against the exercise of injunctive powers in such a case. Section 2 First of the Railway Labor Act requires carriers and their employees to attempt to work out their disputes by agreement. Section 6 requires at least thirty days' notice of an intended change in agreements. Section 5 First (b) provides that thereafter, in case no settlement is reached and an Emergency Board is not appointed, there shall for thirty days be no change in working conditions, rates of pay, and the like. If an Emergency Board is appointed within the foregoing thirty days pursuant to Section 10, it has thirty days within which to report; and by the same Section 10 it is provided that, after the creation of an Emergency Board and for thirty days after it has

made its report, no change may be made in the conditions out of which the dispute arose except by agreement. The legislative debates and committee reports make it abundantly clear that Congress intended no compulsion beyond the cooling-off period, and that thereafter the railway employees were to be free to strike.[8]

In the instant case, the cooling-off periods and mechanisms provided by the Railway Labor Act were fully complied with. A strike date set for February 1, 1948, was cancelled by petitioners. By agreement of the parties, the thirty-day period for the report of the Emergency Board was extended for an additional twenty-seven days during which further negotiations took place between the parties. The latter failing to achieve agreement, the Board made its report. The subsequent thirty-day cooling-off period expired April 27, 1948. The National Mediation Board then attempted to secure a settlement but without success. No strike call therefore became effective until May 11, 1948. Thus there was in effect a cooling-off period of over three months brought about by the requirements of the Railway Labor Act and the endeavor of petitioners to exhaust every reasonable prospect of securing a settlement. (Fdgs. 1-9, R. 225-226.)

Moreover, that Congress intended there should be no injunctions against railway strikes after expiration of the

[8] Congressman Barkley, manager of the bill on the floor of the House, said (67 Cong. Rec. 4517): "You have either got to go along on the theory of freedom of contract, of voluntary arbitration, of mediation and persuasion, or you must go to the other extreme of compulsory arbitration, compulsory decision, and anti-strike legislation, which has never succeeded in any country in the world where it has ever been tried." For other similar remarks in the House, see 67 Cong. Rec. 4514, 4521, 4569, 4581, 4657, 4703. Senator Watson, who led for the bill in the Senate, said (67 Cong. Rec. 8814): "If we set up this machinery and it fails to prevent strikes, if it shall fail in the effort to preserve harmony between the management and employees of the railroads, then the time may come when we shall be compelled to resort to force; but I want to go to the last extreme of conciliation and mediation before we resort to that last thing in our American civilization." For similar remarks in the Senate, see 67 Cong. Rec. 8815, 9205, 9206-9207.

cooling-off period has been recently confirmed in the Labor Management Relations Act, 1947. Section 206 of that Act provides for a "board of inquiry" in labor disputes in interstate commerce or communication if they imperil national health or safety. By section 207 it has much the same powers as an "emergency board" under Section 10 of the Railway Labor Act. But, unlike the Railway Labor Act system, there is no prohibition upon strikes up to this point. By Section 208 of the Labor Management Act, only after the report of a board of inquiry are the parties to the dispute subject to strike prohibition and, further unlike the Railway Labor Act, such prohibition takes the form of injunction (the Norris-LaGuardia Act being expressly suspended for this purpose). By Section 209, the board of inquiry thereafter makes another report in sixty days, after which within twenty days a secret ballot is taken among the employees and certified to the Attorney General. Thereupon, under Section 210, the Attorney General must move the discharge of the injunction "which motion shall then be granted and the injunction discharged".

Section 212 of the Labor Management Act further provides that the Act "shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time". The reasons for making the Railway Labor Act exclusive in the field of railway labor disputes are apparent. In the field of national-emergency strikes as well as railway strikes, Congress desired to confine compulsion to the limited cooling-off periods. In the railway labor field, the Railway Labor Act already accomplished that purpose by its prohibitions against changes in circumstances for defined periods of time. In other national-emergency strikes, the Labor Management Act brings about the same result by injunctions limited to eighty days' duration. Manifestly in both statutes Congress has indicated its policy against strike injunctions as a means of settling labor disputes in any industry.

We submit therefore that the trial court's ruling that there is an equitable cause of action here is inconsistent with the decisions of this Court and with the congressional policy indicated in the two statutes. In any event, the trial court has decided an important question of federal law which has not been but should be decided by this Court.

3. In holding that suit was properly brought in the District of Columbia, the district court has decided a question of substance relating to the construction of a federal statute which has not been but should be decided by this Court.

The Brotherhood of Locomotive Engineers has a legislative representative, a local lodge, and an office in the District of Columbia and, between May 7, 1948 and the date of the entry of the injunction, its chief executive had been in the District of Columbia on several occasions at the request of the Assistant to the President of the United States (R. 173, 175, 183, 184-185) to negotiate with the carriers for settlement of the dispute (Fdg. 16, R. 231-232). These facts, upon which venue was based below, are the same in the case of the Brotherhood of Locomotive Firemen and Enginemen except that one of its officers is also a member of the Railway Labor Executives Association, an entirely separate organization which has its headquarters in the District of Columbia and engages in legislative and other activities of general interest to all railway labor unions (Fdg. 17, R. 232, 129-130, 132-134, 199, 212). The Switchmen's Union of North America has no office, local lodge, or legislative representative in the District (R. 42-43, 211-212). It is affiliated with the American Federation of Labor (which has its headquarters in the District of Columbia), one of its officers is a member of the Railway Labor Executives Association, and its chief executive had also been in the District of Columbia on several occasions shortly before the issuance of the injunction at the request

of the Assistant to the President of the United States (R. 212-213, 75-76) to negotiate with the carriers for settlement of the dispute (Fdg. 18, R. 232-233). But it is undisputed that each of petitioners has its principal place of business outside of the District of Columbia (R. 30, 36-37, 42-43, 166, 197, 211).

In the district court petitioners contended that they could not be sued in the District of Columbia because they are not inhabitants thereof, as required by Section 51 of the Judicial Code (28 U. S. C. 112).[9] It is clear of course that an unincorporated association is an inhabitant only of the district in which it has its principal place of business (*Sperry Products* v. *Association of American R. R.*, 132 F. 2d 408 (C. C. A. 2)), just as a corporation is an inhabitant only of the state of its incorporation. *Neirbo Co.* v. *Bethlehem Corp.*, 308 U. S. 165; *Suttle* v. *Reich Bros. Co.*, 333 U. S. 163.

The trial court rejected this contention and held (R. 216-217) that suit was properly brought in the District of Columbia under Section 301(c) of the Labor Management Relations Act, 1947, which provides that a "labor organization" may be sued "in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members." But we think it is clear that Section 301(c) is not applicable to this action. Section 501(3) of the Labor Management Act adopts the definitions of "employee", "employer", and "labor organization" contained in Section 101 (the amended National Labor Relations Act) of the Act. Section 2(3) of the amended National Labor Relations Act (in Section 101 of the Labor Management Act) defines "employee" to exclude "any individual employed by an employer subject to the

[9] The new title 28, United States Code, section 1391 substitutes "reside" for "whereof he is an inhabitant", the term used in Section 51 of the Judicial Code. The two expressions are synonymous for the purposes of this provision. See 28 U. S. C., Appendix, Reviser's Notes, p. 1847.

Railway Labor Act." Similarly, section 2(2) of the amended National Labor Relations Act defines "employer" to exclude "any person subject to the Railway Labor Act." And section 2(5) of the amended National Labor Relations Act defines "labor organization" in terms of "employer" and "employee" as defined in Sections 2(2) and 2(3). Hence the venue provisions of Section 301(c) of the Labor Management Act exclude labor organizations representing railway labor subject to the Railway Labor Act.[10]

This new provision concerning venue in the case of suits involving labor organizations represents a major change in the law. It is a matter of substantial importance which is likely to arise in a number of future cases. We think it is clear therefore that it is a question which should be reviewed by this Court.

4. In granting the broad injunction here involved, the district court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervision.

The complaint, evidence, and findings of fact in this case relate only to a threatened strike by all of these petitioners, arising out of a particular dispute over wage rates and working rules, and involving substantially the whole railroad transportation system of the country. The injunction, however, provides that (R. 237):

> the defendants, and each of them, and their officers, agents, servants and employees, and all persons in active concert or participation with them, be and they

[10] Even if Section 301(c) were applicable, its terms do not cover the Switchmen's Union. The words "engaged in representing" must be construed to include only cases where union officials are so engaged in a more or less continuous manner and as a part of a regular course of conduct of the union business. Those words cannot refer to a visit to the seat of government, at the request of a representative of the Chief Executive, to attend conferences concerning a single controversy. And certainly the fact that the union is affiliated with another organization having its headquarters in the district, or that the Union's president is also a member of an entirely separate organization having its headquarters in the district, cannot bring the union within the section.

> are hereby enjoined from in any manner encouraging, ordering, engaging in, or taking any part in a strike in the transportation by railroad system of the United States, or from in any manner interfering with or affecting the orderly continuance of work in the said railway system, and from taking any action which would interfere with this Court's juridiction in the premises.

When petitioners objected to the breadth of this injunction, the district court said that the injunction "couldn't possibly comprehend anything except the substance of the issues before the Court" but that "it has to be sufficiently comprehensive so that it can't be evaded" (R. 222). We agree with the District Court that the injunction must be construed with reference to the issues it was meant to decide, but it should not be so sweeping or ambiguous as even to seem to put petitioners in peril of contempt proceedings for conduct unrelated to those issues. We think it is clear that this injunction is broader than necessary to restrain the conduct found unlawful or to prevent recurrence of that conduct, and therefore amounts to an abuse of the district court's discretion. *New Haven R.R.* v. *Interstate Com. Com.*, 200 U. S. 361, 403-404; *Swift and Company* v. *United States*, 196 U. S. 375, 396, 401; *Labor Board* v. *Express Pub. Co.*, 312 U. S. 426, 432-437; *May Stores Co.* v. *Labor Board*, 326 U. S. 376, 386, 393.

REASONS FOR GRANTING THE WRIT BEFORE JUDGMENT IN THE COURT OF APPEALS

The right to strike is an important right recognized by the courts and Congress alike as necessary to enable workers to exercise liberty of contract in bargaining with their employers. The injunction granted here has already deprived many thousands of employees of that important right. If the decision below stands, it means that railway employees are to be denied that right which employees in

other industries are still guaranteed. For, under the decision here, whenever there is a threat to strike in the railroad transportation system, the government may properly sue to enjoin the strike.

An injunction, even for a short time, substantially reduces the value of the right to strike. This has been recognized by Congress in its denial in the Norris-LaGuardia Act of jurisdiction in the federal courts to issue either temporary or permanent injunctions in all cases growing out of labor disputes, and particularly in Section 10 of that Act which provides for "the greatest possible expedition" in the review of even orders granting temporary injunctions in such cases.[11]

Petitioners feel that they are entitled to know in this case, and for future cases, whether they have the right to strike or whether that fundamenal right has now disappeared. In view of what has happened here, that decision, in the final and authoritative form now required, can be given only by this Court. Cf. *United States* v. *Mine Workers, supra,* in which this Court took immediate jurisdiction.

We believe therefore that the public interest will be promoted by a prompt settlement in this Court of the questions involved in this case.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia should be granted.
September 1948.

CARL MCFARLAND
ASHLEY SELLERS
KENNETH L. KIMBLE

Counsel for Petitioners.

[11] In the Court of Appeals petitioners moved to advance the hearing but their motion was denied (R. 89).

APPENDIX

Section 4 of the Norris-LaGuardia Act (29 U. S. C. 104) provides in part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> • • • •
>
> (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
>
> (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
>
> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

The Railway Labor Act (45 U. S. C. 151 *et seq*) provides in part:

> • • • •
>
> Sec. 2. • • • •
>
> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> • • • •
>
> Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * *

Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto,

or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

• • • •

Sec. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation. . . .

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

Title II of The Labor Management Relations Act, 1947 (29 U. S. C. 171 *et seq*) provides in part:

• • • •

Sec. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial

part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Sec. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

Sec. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce,

transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

Sec. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in

the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Sec. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

• • • •

Sec. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

Section 301(c) of the Labor Management Relations Act, 1947 (29 U. S. C. 185(c)) provides:

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Section 501(3) of the Labor Management Relations Act, 1947 (29 U. S. C. 142(3)) provides:

When used in this Act—

• • • •

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

Section 101 of the Labor Management Relations Act, 1947 (29 U. S. C. 152) provides in part that:

The National Labor Relations Act is hereby amended to read as follows:

* * * *

"Sec. 2. When used in this Act—

* * * *

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholders or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * *

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Section 51 of the Judicial Code (28 U. S. C. 112) provides in part:

> . . . no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant . . .

The Act of August 29, 1916 (10 U. S. C. 1361), the purported statutory authority for the seizure here, provides in part:

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.